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PATENT
Docket No. 53481US009
(formerly 53481USA1B.009)

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06/05/03
AS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants: Wayne K. DUNSHEE et al.) Group Art Unit: 1714
Serial No.: 09/577,551) Examiner: P. D. Niland
Confirmation No.: Unknown)
Filed: 24 May 2000)
For: ABRASION-RESISTANT INK COMPOSITIONS AND METHODS OF USE

REPLY BRIEF UNDER 37 C.F.R. §1.193(a)

Mail Stop Appeal Brief - Patents
Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Examiner's Answer mailed 3 March 2003, Appellants provide the following comments.

The Rejection

The Examiner maintained the rejection of claims 11-13, 16-45, and 49-52 under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,162,141 (Davey et al.) in view of U.S. Pat. No. 4,334,530 (Hassell) and EP 596 503 (Miyamoto et al.).

Appellants maintain the assertion that claims 11-13, 16-45, and 49-52 are not obvious over U.S. Pat. No. 5,162,141 (Davey et al.) in view of U.S. Pat. No. 4,334,530 (Hassell) and EP 596 503 (Miyamoto et al.).

Response to Examiner's Argument

The Examiner asserts that Davey et al. and Miyamoto et al. are analogous art in view of Appellant's claims to an elastomeric bandage including a printed image (claim 49),

methods for printing an image on an elastomeric bandage (claims 16 and 25), methods for improving durability of an image on an elastomeric bandage (claim 11), and methods for limiting abrasion of an ink on an elastomeric bandage (claim 39). Appellants respectfully disagree.

As pointed out by the Examiner, in order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either (1) be in the field of applicant's endeavor or (2) be reasonably pertinent to the particular problem with which the inventor was concerned. Neither Davey et al. nor Miyamoto are directed to the field of printing on elastomeric bandages. Furthermore, neither Davey et al. nor Miyamoto are reasonably pertinent to the particular problem with which Appellants were concerned.

Appellants were concerned with printing on elastomeric bandages. Bandages are relatively flexible and elastomeric, requiring any image thereon to be able to withstand forming to and flexing with an animate body. This is the problem with which Appellants were concerned, the problem of printing on an elastomeric surface such that the image is able to form, flex, and recover with the body movements of the wearer, once it is affixed to a body, without the image delaminating.

The films of Davey et al. and Miyamoto may require durability and be subject to stress; however, it is not necessarily the degree of stress, but the type of stress with which Appellants were concerned. The Examiner stated at page 6, lines 8-13 that it has not been shown that the types of stresses and strains are significantly different, and asserted that "buildings expand and contract with geographical forces and with heat expansion and cold contraction," and that the flooring is stretched thereby, as well as by the motion of people walking on it. Appellant respectfully asserts that any expansion or contraction of buildings due to natural forces is typically slight and occurs over a longer period of time in comparison to the compound flexing in multiple directions almost simultaneously that is required of a bandage. Furthermore, if flooring were to flex in the same manner and to the same degree as is required of a bandage, Appellants submit that one would not be able to walk on it.

The Examiner stated at page 6, line 6 that Appellants argue that Davey et al. relate

only to floor coverings. Appellants respectfully direct the Examiner's attention to page 3, line 17 to page 7, line 3 of Appellants Appeal Brief, wherein Appellants state that "Davey et al. disclose a polymeric sheet having an incompatible ink permanently bonded thereto (Davey et al., column 2, lines 35-37) for use as decorative surface products for floors, walls, and furniture (Davey et al., column 3, lines 61-62," and "[a] further object of Davey et al. is to provide a floor covering including a polymeric sheet and lithographic ink or electrographic toner which will have sufficient adhesion to permit use as a floor covering (Davey et al., column 2, lines 43-47)."

Appellants submit that Davey et al. is not exclusively directed to flooring. However, Appellants also submit that none of the uses disclosed in Davey et al. would, as in flooring, typically be subjected to the compound flexing in multiple directions almost simultaneously that is required of a bandage.

The Examiner also stated that "Miyamoto further relates to bandages as similar stresses are placed on bandages when they are sterilized." Appellants respectfully point out that the present claims do not recite sterilization of bandages. Furthermore, as with Davey et al., the stresses to which Appellant's bandages are subjected are of a different type than the stresses to which the packaging of Miyamoto is subjected. The packaging of Miyamoto is not subject to the compound flexing in multiple directions required of a bandage adhered to an animate body.

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Summary

It is respectfully submitted that the pending claims 11-13, 16-33, 35-37, 39-45, and 49-52 are in condition for allowance and notification to that effect is respectfully requested.

Respectfully submitted for
Wayne K. DUNSHEE et al.

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May 27, 2003
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I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR §1.10 on the date indicated above and is addressed to the Assistant Commissioner for Patents, Mail Stop AF, P.O. Box 1450, Alexandria, VA 22313-1450.

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